

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TYHEEM Y. KEESH,

Plaintiff,

ORDER

v.

19-CV-08942 (PMH)

JONATHAN P. FRANCO,

Defendant.

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PHILIP M. HALPERN, United States District Judge:

Counsel for all parties appeared for an in-person pretrial conference on April 26, 2023. For the reasons set forth on the record, Defendant's motions *in limine* (Docs. 122, 148) are GRANTED IN PART AND DENIED IN PART. With respect to the motion that sought preclusion of testimony concerning Defendant's alleged membership in the Brotherhood, the request is denied, however, testimony about the Brotherhood will be limited to the belief that prisoners should not complain, and nothing about race or white supremacy. The parties are directed to meet and confer by May 26, 2023 to agree on a limiting instruction directing the jury to consider any such evidence only to assess the causation element. The Court will not permit direct or cross-examination concerning race or white supremacy.

Defendant's motion to preclude Plaintiff from recovering compensatory damages for emotional distress is granted as unopposed. Defendant's motion to preclude Plaintiff from introducing evidence at trial of any alleged emotional distress is denied. Emotional distress evidence is relevant to nominal and punitive damages. The parties are directed to meet and confer by May 26, 2023 to agree on a limiting instruction directing the jury to consider Plaintiff's limited presentation of emotional and/or psychological condition reasonably related to the alleged retaliatory action for the limited purpose of nominal or punitive damages.

As explained more fully on the record during the appearance, the Court directs as follows:


1. The parties shall meet and confer regarding the Court's directives and instructions regarding changes to the Joint Pretrial Order and file, by **May 26, 2023**, an Amended Proposed Joint Pretrial Order.
2. The questions in the parties' proposed *Voir Dire* are all granted or granted in substance except that Interaction with the State and Law Enforcement Questions 18-20, Trial Participants Question 9, and Background Question 25 are denied.
3. The parties shall review the proposed *Voir Dire* Questionnaire Form and Summary provided by the Court during the conference and file, by **May 26, 2023**, a joint letter informing the Court as to any objections or additions thereto.
4. The parties shall meet and confer regarding changes to the proposed Verdict Sheet and file, by **May 26, 2023**, a revised joint proposed Verdict Sheet.
5. The parties shall meet and confer regarding objections in the Proposed Jury Instructions and file, by **May 26, 2023**, Amended Proposed Jury Instructions, renumbered sequentially.
6. All of the revised pretrial materials must be filed via ECF and simultaneously e-mailed, in Word format, to Chambers e-mail.
7. Three exhibit binders containing the parties' exhibits (without duplicates), and an index listing the content of the binders shall be produced to the Court by **May 26, 2023**.
8. A final pretrial conference has been scheduled for **June 29, 2023 at 10:30 a.m.**

See Transcript.

The Clerk of the Court is respectfully directed to terminate the motion sequences pending at Doc. 122 and Doc. 148.

SO ORDERED:

Dated: White Plains, New York
April 26, 2023



PHILIP M. HALPERN
United States District Judge